

CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Introduce Ordinance Amending Title 5 – Permits And Regulations, Chapter 5.40 – Adult-Oriented Businesses, Repealing And Reenacting Sections 5.40.300, 5.40.305, 5.40.400, And 5.40.405 of the Lodi Municipal Code Relating to Adult-Oriented Businesses

MEETING DATE: November 19, 2003

PREPARED BY: City Attorney

RECOMMENDATION: That the City Council introduce ordinance amending the Adult-Oriented Business provisions of the Lodi Municipal Code which among other things, removes the requirement that applicants for adult-oriented business licenses provide their social security number and removes the prohibition of licensure for applicants with prior criminal histories.

BACKGROUND: As Council recalls, the City recently settled litigation with a local adult business owner that requires the City to amend its adult business ordinance. The revisions set forth in the ordinance considered here are designed to remove certain elements of the adult business ordinance that the adult business owner contended violate the First Amendment. Specifically, the City Attorney's Office has removed the requirements that applicants provide fingerprints and a social security number with their application for an adult-oriented business license. The social security number remains a voluntary option for the applicant to prevent name confusion. In addition, the City Attorney's Office has removed the prohibition of licensure for applicants with a prior history of criminal or civil adult business violations.

FUNDING: Not applicable.

Respectfully submitted,



Randall A. Hays, City Attorney

APPROVED: _____



H. Dixon Flynn, City Manager

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI AMENDING
TITLE 5 – PERMITS AND REGULATIONS, CHAPTER 5.40 – ADULT-ORIENTED
BUSINESSES REPEALING AND REENACTING SECTIONS 5.40.300, 5.40.305,
5.40.400, AND 5.40.405 OF THE LODI MUNICIPAL CODE RELATING TO ADULT-
ORIENTED BUSINESSES

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

SECTION 1. Section 5.40.300 “Adult-Oriented Business License Required” of the Lodi Municipal Code is hereby repealed and reenacted to read as follows:

Every person who proposes to maintain, operate, conduct, or establish an adult-oriented business in the city shall file an application with the chief of police on a form provided by the city and shall pay a non-refundable application, investigation, and licensing fee set forth by resolution from time to time by the city council.

A. All applicants must be qualified according to the provisions of this article. The application may request and the applicant shall provide such information as to enable the chief of police to determine whether the applicant meets the qualifications established in this article.

B. If a person who wishes to operate an adult-oriented business is an individual, the person must sign the application. If a person who wishes to operate an adult-oriented business is other than an individual, each individual who has a fifteen (15%) percent or greater interest in the adult-oriented business must sign the application. Each applicant must be qualified under this article and each applicant shall be considered a licensee if a license is granted.

C. The completed application for an adult-oriented business license shall contain the following information and shall be accompanied by the following documents:

1. If the applicant is:

a. An individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is at least eighteen years of age,

b. A partnership, the partnership shall state its complete name, address and the names of all partners whether the partnership is general or limited, and a copy of the partnership agreement, if any,

c. A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of California, the names and capacity of all officers and directors, and the name of the registered corporate agent and the address of the registered office for service or process;

2. If the applicant intends to operate the adult-oriented business under a name other than that of the applicant, the applicant shall register the fictitious name of the adult-oriented business with the appropriate governmental entity and show written proof of registration of the fictitious name;

3. Whether the applicant has been convicted of a specified criminal activity and, if so, the specified criminal activity involved, the date, the place, and jurisdiction of each;

4. Whether the applicant has ever had a license previously issued under this chapter or its predecessor, or other similar adult-oriented business ordinances from another city or county, denied, suspended or revoked, including the name and location of the adult-oriented business for which the license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this chapter, or its predecessor, whose license has previously been denied, suspended or revoked, including the name and location of the adult-oriented business for which the license was denied, suspended or revoked as well as the date of denial, suspension or revocation;

5. Whether the applicant holds any other licenses under this chapter, or its predecessor, or other similar adult-oriented business ordinance from another city or county, and, if so, the names and locations of such other licensed businesses;

6. The particular adult-oriented business for which the applicant is applying. An applicant must apply separately for each adult-oriented business to be operated, owned, managed, or controlled by the applicant;

7. The address to which notice of action on the application is to be mailed;

8. The location of the adult-oriented business, including a legal description of the property, street address, and telephone number(s), if any;

9. The applicant's mailing address and residential address;

10. A recent photograph of the applicant;

11. The applicant's driver's license number, Social Security Number, and the applicant's state or federally issued Tax Identification Number. The supplying of a Social Security Number is optional at the choice of the applicant. A Social Security Number does assist in differentiating between like-named persons.

12. The names of all employees, independent contractors, and other persons who will perform at the adult-oriented business, who are required by this chapter to obtain an adult-oriented business employee license.

SECTION 2. Section 5.40.305 "Investigation and Action on Application for Adult-Oriented Business License" of the Lodi Municipal Code is hereby repealed and reenacted to read as follows:

A. The chief of police shall determine whether the application contains all of the information required by the provisions of this article. If it is determined that the application is not complete, the applicant shall be notified in writing within ten business days of the date of receipt of the application that the application is not complete and the reasons therefore. The applicant shall have thirty calendar days from the date of the notice to submit additional information to render the application complete. The applicant's failure to submit the additional information within this time period renders the application null and void. Within five business days following the receipt of a supplemental or amended application, the chief of police shall again determine whether the application is complete. Evaluation and notification shall occur as provided above until such time as the application is found to be complete. Once the application is found to be complete, the applicant shall be notified within five business days of that fact. If an applicant submits two consecutive incomplete applications, the applicant shall be notified in writing that a new application must be filed with the chief of police as set forth herein.

B. Upon determining that a complete application and the required nonrefundable application fee have been submitted, the chief of police shall issue a temporary license to the applicant, which shall be valid for thirty business days after the date of issuance.

C. Within five business days after receipt of a completed application and the required filing fee, the chief of police shall transmit copies of the application and its attachments to appropriate city departments.

D. Within thirty business days after receipt of a completed application and the required filing fee, the chief of police shall complete the investigation, grant or deny the application in accordance with the provisions of this section, and shall notify the applicant as follows:

1. If the application is approved, the chief of police shall write or stamp "Granted" on the application and date and sign such notation. The chief of police shall attach to the application a regular adult-oriented business license.

2. If the application is denied, the chief of police shall write or stamp "Denied" on the application and date and sign such notation. The chief of police shall attach to the application a statement of the reasons for denial.

3. The document specified in subsections (D)(1) and (D)(2) of this section shall be placed in the United States mail, first class postage prepaid, addressed to the applicant at the address specified in the application. All notices given hereunder shall be deemed given upon the date they are deposited in the United States mail or the date upon which personal service is provided.

E. The chief of police shall approve the issuance of a regular license to an applicant, unless it is determined by a preponderance of the evidence that any of the following findings is true:

1. An applicant is under eighteen years of age.

2. An applicant has failed to provide information reasonably necessary for issuance of the license or has knowingly answered a question or request for information falsely on the application form.

3. An applicant has been denied a license by the city to operate an adult-oriented business within the twelve months preceding the filing of the application or an applicant whose license to operate an adult-oriented business has been revoked within twelve months.

F. The regular license, if granted shall expire one year from the date of issuance and may only be renewed by the licensee filing with the chief of police a written request or renewal on a form provided by the city, accompanied by a nonrefundable application, investigation and licensing fee set forth by resolution from time to time by the city council, and a copy of the license to be renewed. The request for renewal shall be made at least thirty days before the expiration date of the regular license. When a renewal request is made less than thirty days before the expiration date, the expiration shall not be stayed. The chief of police shall act upon applications for license renewal as provided herein for applications for licenses.

G. The regular license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the adult-oriented business and the classification of adult-oriented business as set forth in Section 5.40.130, for which the license is issued.

H. All licenses shall be posted in a conspicuous place at or near the entrance to the adult-oriented business so that all persons entering the adult-oriented business may easily read them at any time.

I. Within thirty calendar days of any change in the information originally submitted with the license application, all licensees shall provide the chief of police with a written statement supplementing or amending the information required by this article. Failure to submit such changes shall be grounds for suspension of the adult-oriented business license.

J. Within thirty calendar days of any change in employee hiring or status, all licensees shall provide the chief of police with a written statement supplementing or amending the information required by this article. Failure to submit such changes shall be grounds for suspension of the adult-oriented business license.

K. If the chief of police neither grants nor denies a completed application for which the filing fees have been paid, within thirty business days after the city's receipt of the application, the applicant may begin operating the adult-oriented business for the single classification of adult-oriented business as set forth in Section 5.40.130, for which the license was sought, subject to compliance with the development and performance standards and regulations of Article VI of this chapter.

SECTION 3 Section 5.40.400 "Adult-Oriented Business Employee License Required" of the Lodi Municipal Code is hereby repealed and reenacted to read as follows:

A. No person shall engage in or participate in any live performance depicting specified anatomical areas or involving specified sexual activities in an adult-oriented business, without a valid adult-oriented business employee license issued by the chief of police.

B. No person shall be employed at an adult-oriented business, except those persons excluded from the license requirements pursuant to Section 5.40.145, without a valid adult-oriented business employee License issued by the chief of police.

C. Before any applicant may be issued an adult-oriented business employee license, the applicant shall submit to the chief of police on a form to be provided by the city the following information:

1. The applicant's legal name and any other name including stage names or aliases used by the applicant;

2. Age, date, and place of birth;

3. Height, weight, hair and eye color;

4. Present residence address and telephone number;

5. Present business address and telephone number;

6. Date, issuing state and number of driver's license or other identification card information;

7. Social Security Number: The supplying of a Social Security Number is optional at the choice of the applicant. A Social Security Number does assist in differentiating between like-named persons; and

8. Satisfactory written proof that the individual is at least eighteen years of age.

D. Attached to the application form shall be the following:

1. A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the police department. Any fees for the photographs and fingerprints shall be paid by the applicant;

2. A statement detailing the license history of the applicant for the five years immediately preceding the date of the filing of the application, including whether such applicant previously operated, or is seeking to operate, in this or any other county, city, state, or country, has ever had a license permit, or authorization to do business, denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application;

3. A statement whether the applicant has been convicted within the past five years, as of the date of submitting the application, a specified criminal activity as defined in this chapter and, if so, the specified criminal activity involved, the date, place and jurisdiction of each conviction;

4. A statement whether the applicant is or has ever been licensed or registered as a prostitute, or otherwise authorized by the laws of any other jurisdiction to engage in prostitution, the place of such registration, licensing or legal authorization, and the inclusive dates during which the applicant was so licensed, registered, or authorized.

E. Every application for an adult-oriented business employee license, whether for a new license or for a renewal of an existing license, shall be accompanied by a non-refundable application, investigation and license fee as set forth by resolution from time to time by the city council.

SECTION 4. Section 5.40.405 "Investigation and Action on Application for Adult-Oriented Business Employee License" of the Lodi Municipal Code is hereby repealed and reenacted to read as follows:

A. Upon receipt of an application for an adult-oriented business employee license and the required non-refundable application, investigation and licensing fee, the chief of police shall issue a temporary license to the applicant.

B. The chief of police shall determine whether the application contains all of the information required by the provisions of this article. If it is determined that the application is not complete, the applicant shall be notified in writing within five business days of the date of receipt of the application that the application is not complete and the reasons therefore. The applicant shall have ten calendar days from the date of the notice to submit additional information to render the application complete. The applicant's failure to submit the additional information within this time period renders the application null and void. Within five business days following receipt of a supplemental or amended application, the chief of police shall again determine whether the application is complete. Evaluation and notification shall occur as provided above until such time as the application is found to be complete. Once the application is found to be complete, the applicant shall be notified within five business days of that fact. If an applicant submits two consecutive incomplete applications, the applicant shall be notified in writing that a new application must be filed with the chief of police as set forth herein.

C. Within fifteen business days after the issuance of the temporary license, the chief of police shall grant or deny the application and so notify the applicant as follows:

1. If the application is approved, the chief of police shall write or stamp "Granted" on the application and date and sign such notation. The chief of police shall attach to the application an adult-oriented business employee license.

2. If the application is denied, the chief of police shall write or stamp "Denied" on the application and date and sign such notation. The chief of police shall attach to the application a statement of the reasons for denial.

3. The documents specified in subsections (C)(1) and (C)(2) of this section shall be placed in the United States mail, first class postage prepaid, addressed to the applicant at the address specified in the application. All notices given hereunder shall be deemed given upon the date they are deposited in the United States mail or the date upon which personal service is provided.

D. The chief of police shall grant the application unless it is determined by a preponderance of the evidence that any of the following findings is true:

1. The applicant has failed to provide information reasonably necessary for issuance of the license or has knowingly answered a question or request for information falsely on the application form;

2. The applicant is under the age of eighteen years;

3. The adult-oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this chapter; and

E. The license, if granted shall expire one year from the date of issuance and may be renewed only by the licensee filing with the chief of police a written request for renewal on a form provided by the city, accompanied by the required fee and a copy of the license to be renewed. The request for renewal shall be made at least thirty days before the expiration date of the license. When a renewal request is made less than thirty days before the expiration date, the expiration shall not be stayed. The chief of police shall act upon applications for license renewal as provided herein for applications of initial licenses

F. The license, if granted, shall state on its face the name of the person to whom it is granted and the expiration date. The chief of police shall provide each person issued an adult-oriented business employee license with an identification card containing the name, photograph and license number of the licensee.

G. Both the license and the identification card shall be available for inspection at all times during which the licensee is on the premises of the adult-oriented business.

H. If the chief of police neither grants nor denies a completed application for which the filing fees have been paid, within fifteen business days after its receipt, the applicant may begin the employment for which the license is sought, subject to strict compliance with the development and performance standards and regulations of Article VI of this chapter.

SECTION 5. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 6. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 7. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 8. This ordinance shall be published one time in the "Lodi News Sentinel", a daily newspaper of general circulation printed and published in the City of Lodi and shall take effect thirty days from and after its passage and approval.

Approved this ____ day of _____, 2003

SUSAN HITCHCOCK
Mayor

Attest:

SUSAN J. BLACKSTON
City Clerk

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State of California
County of San Joaquin, ss.

I, Susan J. Blackston, City Clerk of the City of Lodi, do hereby certify that Ordinance No. ____ was introduced at a regular meeting of the City Council of the City of Lodi held November 19, 2003, and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held _____, 2003 by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

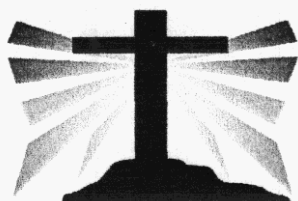
ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. ____ was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

SUSAN J. BLACKSTON
City Clerk

Approved as to Form:

RANDALL A. HAYS
City Attorney



New Hope Community Church of Lodi
330 S. Fairmont, Suite 1, Lodi, Ca. 95241
(209) 334-HOPE

The mood is friendly The dress casual The music upbeat Message might change your life

November 17, 2003

RECEIVED

NOV 19 2003

City Clerk
City of Lodi

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From: Reverend Stephen A. Jarrett

To: City of Lodi Council

Subj: Ordinance Amending the Adult-Oriented Business Ordinance of the Lodi Municipal Code

First this evening I want to apologize to the Council for my not appearing in person. Believe me I wanted to be here with you more than you know. However, I received from the Billy Graham School of Evangelism a full scholarship to attend a three day seminar that started this afternoon at 3:00 PM, in Monterey. As a result I have asked a trusted colleague to read this written statement to you.

It is my desire tonight to review the history of this issue and to bring to light several questions I have concerning what has taken place. I will start at the beginning.

In 1999, a group of Christian pastors were meeting monthly for prayer and fellowship. Included in that group was Ken Owen, founder and director of Christian Community Concerns. One meeting in 1999, Ken came to the meeting with a desire to present to the City Council a new and better ordinance concerning the regulation of adult oriented business. Ken had received a copy of an ordinance from the C.L.E.A.N. organization in Modesto, California. This ordinance had been adopted by the City of Modesto and had been effective in limiting the scope of such business and successful in deterring the establishment of any new adult oriented businesses.

The pastors in attendance, after reviewing this new ordinance, agreed with Ken Owen that this ordinance would be good for the City of Lodi. These pastors determined that the protection and preservation of the moral values that the citizens of this community hold and demonstrate was of great importance.

With the backing of this group of pastors, Ken Owen presented the ordinance to the City Council. The City Council sent the ordinance to the City Attorney for review, as they should. The City Attorney, taking almost ten months to ensure that the ordinance was correct and defensible, as he should, presented the ordinance to the City Council and it was approved on October 18, 2000.

This ordinance was approved by a unanimous vote. Mayor Hitchcock, Councilmember Land, you both voted to approve this ordinance. Councilmember Hansen, you were the police chief at the time and I do believe you were conferred with concerning the ordinance and that you support the ordinance.

This ordinance went into effect. There was even a period of time given to allow the current Adult-Oriented businesses to come into compliance with the new ordinance. Two years later, as the ordinance is being enforced, the one owner of both the adult oriented businesses located in Lodi, threatens a lawsuit.

We learn through the media that the City Attorney had been in negotiations with this owner and his attorney from October 2002 until February 2003. Apparently, according to news reports, to determine what the owner wanted to have removed from this ordinance so that a law suit would not be filed.

My first question this evening is, did you, the City Council, know of these negotiations?

My second question this evening is, when did the City of Lodi receive unreliable information concerning this ordinance? When it was presented by the City Attorney for approval, or two years later when the City Attorney determines that the City cannot defend this ordinance?

I find it very objectionable that the City Attorney was in negotiations with the owner. I find that to be very suspect. I believe that it speaks volumes concerning the attitude of the City Attorney. I wonder how often the District Attorney negotiates with a person charged with a crime so that the person charged with a crime will not file a law suit. It is the job and duty of the City Attorney to defend and protect the City against such attacks upon the community. Not to enter into negotiations of compromise.

My third question this evening is how is it that the City Attorney did nothing to defend the City of Lodi against this law suit in Federal Court? Our judicial system is set up so that one must respond to a law suit or one loses the law suit by default. By the best sources I have at my disposal, I have been informed that this is what in fact has happened in this case. The City Attorney failed to file any response and the City of Lodi has lost this case in federal court by default. I have been told that any filing at all would have delayed this case until the good citizens of Lodi could have found the City Attorney the help he needed to defend this ordinance.

I have also been informed that since this was a federal court judgment, the City of Lodi is now forever saddled with this revised ordinance. The City of Lodi will never, ever be allowed to change this ordinance because of the lack of action by the City Attorney.

Now lets get to the issue of why the City Attorney decided that he could not defend this ordinance. On June 6, 2003, the City Attorney sent me a copy of the case law on which he determined that the ordinance was indefensible. It was a case heard in September of 1971 in the Superior Court of California. I then sent the City Attorney a copy of information that I had concerning the defense of such ordinances based on U.S. Supreme Court ruling of 1986. I also sent the City Attorney a complete copy of a sample model ordinance that the National Law Center for Children and Families had created. This model ordinance had case references for every single aspect of that ordinance. As I looked at the provisions in the model ordinance concerning the licensing of the owner and employees, I could see no difference between it and the City of Lodi ordinance.

How do you base your legal decision not to defend the moral values of a community on case law that is over 30 years old?

Now we come to the issue that was well documented in the media that the City Attorney was afraid to go in front of the 9th District Circuit Court. Probably the saddest point of all is that our City Attorney would not defend what the City felt was right and correct because of the leaning of the judges in the past would not favor the City's case. Why are we afraid to get our nose bloodied when it comes to the moral values of our community but we are ever ready to go into great debt in a seemingly questionable financial process to defend ourselves, where in fact, we are guilty?

Now we come to you, City Council Members, for the fact is, the buck stops with you. The reality is that you authorized the City Attorney to settle. To settle without a fight. To settle without getting further information or legal council. The City Attorney waved a settlement that required the removal of some of the teeth of the ordinance and a small amount of money (if you can call \$100,000 a small amount, I don't) and this problem would go away. So, in essence you told the citizens of the City of Lodi that their desire that these businesses be limited and regulated was not important enough to fight for.

Now you will say that you were going on the information provided by the City Attorney. That a court battle would be costly, and if we lost the damages would be great, and that there was little hope that the City could prevail.

I find that all very interesting because Ken Owen told me that the City Attorney told him, that the owner had no case because he could not prove damages. If you cannot prove damages you cannot receive damages. So according to the City Attorney's own words the worst case scenario of defending this ordinance would have been the time required by the City Attorney's staff. If we had lost the court would have required us to change the ordinance and pay the reasonable costs of the owner's attorney. Since the City Attorney gets a very good salary to defend the City, he would only have been doing his job. I tell you very clearly that the cost to defend this ordinance would have been worth it, worth it to the citizens of this community.

Not so many months ago I did stand before you in a Council meeting and I read a statement concerning the desire of this community for you to defend this ordinance. This statement was signed by seven pastors. On the day before you entered into closed session to discuss the offering of a settlement I sent each of you a packet of information, outlining the defenses available and urging you to seek additional information. I have never received any communication from any of you concerning this issue. I know for a fact that Ken Owen has spent much time in talking with each of you. Yet it seems that you did not hear. Or maybe even worse you did not care.

Thanks to the non-effort of the City Attorney and your not listening to us, this ordinance is changed. We cannot do anything about it now. It is law. It is also a sad day for this Council and this City.



Stephen A. Jarrett - Pastor